

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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EDWARD LEROY MILNER,

Case No. 14-CV-3079 (PJS/HB)

Plaintiff,

v.

ORDER

TOM ROY; MICHELLE SMITH; LT. BOB  
PLUMM; SUE ARMSTRONG; LISA  
OLSON; MARY McCOMB; CHERYL  
COLE; RICHARD NEURER; COLL  
DUFFY; and NACOLE LIND,

Defendants.

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Edward Leroy Milner, pro se.

Plaintiff Edward Milner filed this action under 42 U.S.C. § 1983 against numerous defendants. Although the nature of Milner's claims is not entirely clear, he appears to allege due-process violations stemming from two separate incidents, namely, (1) a prison-disciplinary proceeding in which he was accused of hiding medication in his cheek; and (2) the failure to reimburse him for his television, which he believes was unintentionally damaged by a prison official, *see* ECF No. 7 at 10.

This matter is before the Court on Milner's objection to the September 11, 2014 Report and Recommendation ("R&R") of Magistrate Judge Hildy Bowbeer.<sup>1</sup> Judge Bowbeer recommends summarily dismissing this action under 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim. Milner objects to that recommendation.<sup>2</sup> The Court has conducted a de novo

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<sup>1</sup>The R&R was docketed on September 12.

<sup>2</sup>Milner also sought to remove Judge Bowbeer from this case, in response to which Judge Bowbeer issued an order declining to recuse. ECF No. 8.

review. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Based on that review, the Court overrules Milner’s objection and adopts the R&R.

Milner objects that the Court does not have the authority to screen his complaint on the merits, citing various provisions of Minnesota law. But this is a federal case, not a state case. This case is governed by 28 U.S.C. § 1915(e)(2)(B), which expressly gives the Court the authority to dismiss a case “at any time” if the Court determines that the complaint fails to state a claim.

Milner also argues that his case should not be dismissed based on his inability to pay the initial partial filing fee. That is not why Milner’s case is being dismissed, however. To the contrary, Judge Bowbeer expressly found that Milner does not have the means to pay an initial partial filing fee, and she does *not* recommend dismissing his case for failure to pay it. ECF No. 6 at 3. Instead, Judge Bowbeer recommends dismissal because Milner’s complaint fails to state a claim on which relief may be granted.

Having reviewed the complaint, the R&R, and Milner’s objection, the Court agrees with that recommendation. Milner’s complaint does not state a viable claim against any of the defendants. *See Orr v. Larkins*, 610 F.3d 1032, 1033-34 (8th Cir. 2010) (per curiam) (nine-month stay in administrative segregation did not deprive prisoner of protected liberty interest);<sup>3</sup> *Daniels v. Williams*, 474 U.S. 327, 328 (1986) (“the Due Process Clause is simply not implicated

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<sup>3</sup>As Judge Bowbeer noted, it is not entirely clear what discipline Milner received for his “cheeking” infraction. Judge Bowbeer assumed that Milner received 30 days’ administrative segregation; other portions of the record suggest that he may have received only 10 days’ “loss of privileges” (the nature of which is not explained). *See* ECF No. 1-2 at 13. If nine months in administrative segregation does not trigger the protections of due process, *see Orr*, 610 F.3d at 1033-34, then surely a loss of unspecified privileges for 10 days also does not do so.

by a *negligent* act of an official causing unintended loss of or injury to life, liberty, or property”).  
Milner’s complaint is therefore dismissed.

ORDER

Based on the foregoing, and on all of the files, records, and proceedings herein, the Court  
OVERRULES plaintiff’s objection [ECF No. 7] and ADOPTS the R&R [ECF No. 6]. IT IS  
HEREBY ORDERED THAT:

1. This action is summarily DISMISSED WITH PREJUDICE under 28 U.S.C.  
§ 1915(e)(2)(B)(ii).
2. Milner’s amended application to proceed *in forma pauperis* [ECF No. 4] is  
DENIED.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: October 30, 2014

s/Patrick J. Schiltz

Patrick J. Schiltz  
United States District Judge